

AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN ASSEMBLY JUNE 25, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MARCH 29, 2012

**SENATE BILL**

**No. 1192**

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**Introduced by Senator Evans**

February 22, 2012

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An act to amend Sections 8670.40, 8670.41, and 8670.48 of, and to add Section 8670.43 to, the Government Code, relating to oil spills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1192, as amended, Evans. Oil spill prevention and administrative fee.

Existing law imposes an oil spill prevention and administration fee in an amount determined by the administrator to implement oil spill prevention activities, but not to exceed, until January 1, 2015, \$0.065 per barrel of crude oil or petroleum products, on persons owning crude oil or petroleum products at a marine terminal. The fee is deposited into the Oil Spill Prevention and Administration Fund in the State Treasury. Upon appropriation by the Legislature, moneys in the fund are available for specified purposes, including to cover the costs incurred by the Oiled Wildlife Care Network for training and field collection, and search and rescue activities.

This bill would extend the authority to use money in the fund to pay for other costs incurred by the Oiled Wildlife Care Network, including costs of training and field collection, and search and rescue activities, and would increase the maximum annual assessment from \$0.065 to \$0.068 per barrel of crude oil or petroleum products. The bill would

subsequently decrease the annual assessment, beginning January 1, 2015, to a maximum of \$0.053 per barrel of crude oil or petroleum products.

Existing law permits the administrator to charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the administrator's costs in implementing oil spill prevention relating to nontank vessels.

This bill would require the fee to be at least \$3,500 per nontank vessel but would give the administrator discretion to reduce the fee for nontank vessels that pose a reduced risk of pollution.

Existing law requires the administrator to submit for each fiscal year, as a part of the Governor's Budget, a proposed appropriation from interest earned on moneys deposited into the Oil Spill Response Trust Fund, in an amount not to exceed \$2,000,000, for the purposes of equipping, operating, and maintaining the network of oiled wildlife rescue and rehabilitation stations, proactive oiled wildlife search and collection rescue efforts, and supporting technology development and research related to oiled wildlife care. Existing law requires that any remaining interest earned be deposited into the Oil Spill Prevention and Administration Fund.

~~This bill would authorize the administrator to include in this proposed appropriation an additional amount, not to exceed \$2,000,000, from the Oil Spill Prevention and Administration Fund for the purpose of training and field collection, search and rescue activities, and equipping, operating, and maintaining the Oiled Wildlife Care Network. transfer 3 mills of the per barrel of crude oil or petroleum products fee collected, and \$250 of the per nontank vessel fee collected, to fund specified activities the Oiled Wildlife Care Network.~~ The bill would also allow another additional amount, not to exceed the difference between the interest earned and \$2,000,000, to be included in the proposed appropriation from funds deposited into the Oil Spill Response Trust Fund if this proposed appropriation exceeds the interest earned on the funds deposited into the Oil Spill Response Trust Fund available for the fiscal year for which the appropriation is proposed.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 8670.40 of the Government Code is  
2 amended to read:

3     8670.40. (a) The State Board of Equalization shall collect a  
4 fee in an amount determined by the administrator to be sufficient  
5 to carry out the purposes set forth in subdivision (e), and a  
6 reasonable reserve for contingencies. The annual assessment shall  
7 not exceed six and eight-tenths cents (\$0.068) per barrel of crude  
8 oil or petroleum products. Beginning January 1, 2015, the annual  
9 assessment shall not exceed five and three-tenths cents (\$0.053)  
10 per barrel of crude oil or petroleum products.

11     (b) (1) The oil spill prevention and administration fee shall be  
12 imposed upon a person owning crude oil at the time that crude oil  
13 is received at a marine terminal from within or outside the state,  
14 and upon a person who owns petroleum products at the time that  
15 those petroleum products are received at a marine terminal from  
16 outside this state. The fee shall be collected by the marine terminal  
17 operator from the owner of the crude oil or petroleum products  
18 based on each barrel of crude oil or petroleum products so received  
19 by means of a vessel operating in, through, or across the marine  
20 waters of the state. In addition, an operator of a pipeline shall pay  
21 the oil spill prevention and administration fee for each barrel of  
22 crude oil originating from a production facility in marine waters  
23 and transported in the state by means of a pipeline operating across,  
24 under, or through the marine waters of the state. The fees shall be  
25 remitted to the board by the terminal or pipeline operator on the  
26 25th day of the month based upon the number of barrels of crude  
27 oil or petroleum products received at a marine terminal or  
28 transported by pipeline during the preceding month. A fee shall  
29 not be imposed pursuant to this section with respect to crude oil  
30 or petroleum products if the person who would be liable for that  
31 fee, or responsible for its collection, establishes that the fee has  
32 been collected by a terminal operator registered under this chapter  
33 or paid to the board with respect to the crude oil or petroleum  
34 product.

35     (2) An owner of crude oil or petroleum products is liable for  
36 the fee until it has been paid to the board, except that payment to  
37 a marine terminal operator registered under this chapter is sufficient  
38 to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies. The administrator shall notify the board of the adjusted fee rate, which shall be rounded to no more than four decimal places, to be effective the first day of the month beginning not less than 30 days from the date of the notification.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(5) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of an expenditure for this purpose shall not exceed the amount of one hundred thousand dollars (\$100,000) in a fiscal year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars (\$100,000) from

1 the fund for the purpose of allowing the administrator to respond  
2 to threatened oil spills.

3 (6) To reimburse the board for costs incurred to implement this  
4 chapter and to carry out Part 24 (commencing with Section 46001)  
5 of Division 2 of the Revenue and Taxation Code.

6 (7) To cover annual costs incurred by the Oiled Wildlife Care  
7 Network established by Section 8670.37.5, including costs of  
8 training and field collection, and search and rescue activities,  
9 pursuant to subdivision (g) of Section 8670.37.5, ~~not to exceed~~  
10 ~~two million dollars (\$2,000,000), in accordance with Section~~  
11 ~~8670.43.~~

12 (f) The moneys deposited in the fund shall not be used for  
13 responding to an oil spill.

14 (g) The moneys deposited in the fund shall not be used to  
15 provide a loan to any other fund.

16 SEC. 2. Section 8670.41 of the Government Code is amended  
17 to read:

18 8670.41. (a) The administrator shall charge a nontank vessel  
19 owner or operator a reasonable fee, to be collected with each  
20 application to obtain a certificate of financial responsibility, in an  
21 amount that is based upon the administrator's costs in  
22 implementing this chapter relating to nontank vessels and shall be  
23 at least three thousand five hundred dollars (\$3,500) per nontank  
24 vessel.

25 (b) Notwithstanding subdivision (a), the administrator may  
26 charge a reduced fee under this section for nontank vessels  
27 determined by the administrator to pose a reduced risk of pollution,  
28 including, but not limited to, vessels used for research or training  
29 and vessels that are moored permanently or rarely move.

30 (c) The administrator shall deposit all revenue derived from the  
31 fees imposed under this section in the Oil Spill Prevention and  
32 Administration Fund established in the State Treasury under  
33 Section 8670.38.

34 (d) Revenue derived from the fees imposed under this section  
35 may be spent for the purposes listed in subdivision (e) of Section  
36 8670.40, and may not be used for responding to an oil spill.

37 SEC. 3. Section 8670.43 is added to the Government Code, to  
38 read:

39 ~~8670.43. For each fiscal year, consistent with this article, the~~  
40 ~~administrator shall submit, as a proposed appropriation in the~~

1 Governor's Budget, an amount, not to exceed two million dollars  
2 (\$2,000,000);

3 8670.43. Three mills (\$0.003) of the per barrel of crude oil or  
4 petroleum products fee collected pursuant to subdivision (a) of  
5 Section 8670.40 and two hundred fifty dollars (\$250) of the per  
6 nontank vessel fee collected pursuant to Section 8670.43 shall be  
7 transferred from the Oil Spill Prevention and Administration Fund  
8 for the purpose of training and field collection, search and rescue  
9 activities pursuant to the Oil Spill Response Trust Fund and, upon  
10 appropriation by the Legislature, used for funding activities of the  
11 Oiled Wildlife Care Network described in subdivision (g) of  
12 Section 8670.37.5, and equipping, operating, and maintaining the  
13 Oiled Wildlife Care Network.

14 SEC. 4. Section 8670.48 of the Government Code is amended  
15 to read:

16 8670.48. (a) (1) A uniform oil spill response fee in an amount  
17 not exceeding twenty-five cents (\$0.25) for each barrel of  
18 petroleum products, as set by the administrator pursuant to  
19 subdivision (f), shall be imposed upon a person who owns  
20 petroleum products at the time the petroleum products are received  
21 at a marine terminal within this state by means of a vessel from a  
22 point of origin outside this state. The fee shall be remitted to the  
23 State Board of Equalization by the terminal operator on the 25th  
24 day of each month based upon the number of barrels of petroleum  
25 products received during the preceding month.

26 (2) An owner of petroleum products is liable for the fee until it  
27 has been paid to the state, except that payment to a marine terminal  
28 operator registered under this chapter is sufficient to relieve the  
29 owner from further liability for the fee.

30 (b) An operator of a pipeline shall also pay a uniform oil spill  
31 response fee in an amount not exceeding twenty-five cents (\$0.25)  
32 for each barrel of petroleum products, as set by the administrator  
33 pursuant to subdivision (f), transported into the state by means of  
34 a pipeline operating across, under, or through the marine waters  
35 of the state. The fee shall be paid on the 25th day of each month  
36 based upon the number of barrels of petroleum products so  
37 transported into the state during the preceding month.

38 (c) (1) An operator of a refinery shall pay a uniform oil spill  
39 response fee in an amount not exceeding twenty-five cents (\$0.25)  
40 for each barrel of crude oil, as set by the administrator pursuant

1 to subdivision (f), received at a refinery within the state. The fee  
2 shall be paid on the 25th day of each month based upon the number  
3 of barrels of crude oil so received during the preceding month.

4 (2) The fee shall not be imposed by a refiner, or a person or  
5 entity acting as an agent for a refiner, on crude oil produced by an  
6 independent crude oil producer as defined in paragraph (3). The  
7 board shall not identify a company as exempt from the fee  
8 requirements of this section if that company was reorganized, sold,  
9 or otherwise modified with the intent of circumventing the  
10 requirements of this section.

11 (3) For purposes of this chapter, “independent crude oil  
12 producer” means a person or entity producing crude oil within this  
13 state who does not refine crude oil into a product, and who does  
14 not possess or own a retail gasoline marketing facility.

15 (d) A marine terminal operator shall pay a uniform oil spill  
16 response fee in an amount not exceeding twenty-five cents (\$0.25),  
17 in accordance with subdivision (g), for each barrel of crude oil, as  
18 set by the administrator pursuant to subdivision (f), that is  
19 transported from within this state by means of a marine vessel to  
20 a destination outside this state.

21 (e) An operator of a pipeline shall pay a uniform oil spill  
22 response fee in an amount not exceeding twenty-five cents (\$0.25),  
23 in accordance with subdivision (g), for each barrel of crude oil, as  
24 set by the administrator pursuant to subdivision (f), transported  
25 out of the state by pipeline.

26 (f) (1) The fees required pursuant to this section shall be  
27 collected during any period for which the administrator determines  
28 that collection is necessary for any of the following reasons:

29 (A) The amount in the fund is less than or equal to 95 percent  
30 of the designated amount specified in subdivision (a) of Section  
31 46012 of the Revenue and Taxation Code.

32 (B) Additional money is required to pay for the purposes  
33 specified in subdivision (k).

34 (C) The revenue is necessary to repay a draw on a financial  
35 security obtained by the Treasurer pursuant to subdivision (o) or  
36 borrowing by the Treasurer pursuant to Article 7.5 (commencing  
37 with Section 8670.53.1) including any principal, interest, premium,  
38 fees, charges, or costs of any kind incurred in connection with  
39 those borrowings or financial security.

(2) The administrator, in consultation with the State Board of Equalization, and with the approval of the Treasurer, may direct the State Board of Equalization to cease collecting the fee when the administrator determines that further collection of the fee is not necessary for the purposes specified in paragraph (1).

(3) The administrator, in consultation with the State Board of Equalization, shall set the amount of the oil spill response fees. The oil spill response fees shall be imposed on all feepayers in the same amount. The administrator shall not set the amount of the fee at less than twenty-five cents (\$0.25) for each barrel of petroleum products or crude oil, unless the administrator finds that the assessment of a lesser fee will cause the fund to reach the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code within four months. The fee shall not be less than twenty-five cents (\$0.25) for each barrel of petroleum products or crude oil if the administrator has drawn upon the financial security obtained by the Treasurer pursuant to subdivision (o) or if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind incurred in connection with those borrowings remain outstanding or unpaid, unless the Treasurer has certified to the administrator that the money in the fund is not necessary for the purposes specified in paragraph (1).

(g) The fees imposed by subdivisions (d) and (e) shall be imposed in any calendar year beginning the month following the month when the total cumulative year-to-date barrels of crude oil transported outside the state by all feepayers by means of vessel or pipeline exceed 6 percent by volume of the total barrels of crude oil and petroleum products subject to oil spill response fees under subdivisions (a), (b), and (c) for the prior calendar year.

(h) For purposes of this chapter, “designated amount” means the amounts specified in Section 46012 of the Revenue and Taxation Code.

(i) The administrator, in consultation with the State Board of Equalization and with the approval of the Treasurer, shall authorize refunds of any money collected that is not necessary for the purposes specified in paragraph (1) of subdivision (f). The State Board of Equalization, as directed by the administrator, and in accordance with Section 46653 of the Revenue and Taxation Code,



1 shall refund the excess amount of fees collected to each feepayer  
2 who paid the fee to the state, in proportion to the amount that each  
3 feepayer paid into the fund during the preceding 12 monthly  
4 reporting periods in which there was a fee due, including the month  
5 in which the fund exceeded the specified amount. If the total  
6 amount of money in the fund exceeds the amount specified in this  
7 subdivision by 10 percent or less, refunds need not be ordered by  
8 the administrator. This section does not require the refund of excess  
9 fees as provided in this subdivision more frequently than once  
10 each year.

11 (j) The State Board of Equalization shall collect the fee and  
12 adopt regulations implementing the fee collection program. All  
13 fees collected pursuant to this section shall be deposited in the Oil  
14 Spill Response Trust Fund.

15 (k) The fee described in this section shall be collected solely  
16 for any of the following purposes:

17 (1) To provide funds to cover promptly the costs of response,  
18 containment, and cleanup of oil spills into marine waters, including  
19 damage assessment costs, and wildlife rehabilitation as provided  
20 in Section 8670.61.5.

21 (2) To cover response and cleanup costs and other damages  
22 suffered by the state or other persons or entities from oil spills into  
23 marine waters, which cannot otherwise be compensated by  
24 responsible parties or the federal government.

25 (3) To pay claims for damages pursuant to Section 8670.51.

26 (4) To pay claims for damages, except for damages described  
27 in paragraph (7) of subdivision (h) of Section 8670.56.5, pursuant  
28 to Section 8670.51.1.

29 (5) To pay for the cost of obtaining financial security in the  
30 amount specified in subdivision (b) of Section 46012 of the  
31 Revenue and Taxation Code, as authorized by subdivision (o).

32 (6) To pay indemnity and related costs and expenses as  
33 authorized by Section 8670.56.6.

34 (7) To pay principal, interest, premium, if any, and fees, charges,  
35 and costs of any kind incurred in connection with moneys drawn  
36 by the administrator on the financial security obtained by the  
37 Treasurer pursuant to subdivision (o) or borrowed by the Treasurer  
38 pursuant to Article 7.5 (commencing with Section 8670.53.1).

39 (8) To pay for the costs of rescue, medical treatment,  
40 rehabilitation, and disposition of oiled wildlife, as incurred by the

1 network of oiled wildlife rescue and rehabilitation stations created  
2 pursuant to Section 8670.37.5.

3 (l) (1) The interest that the state earns on the funds deposited  
4 into the Oil Spill Response Trust Fund shall be deposited in the  
5 fund and shall be used to maintain the fund at the designated  
6 amount specified in subdivision (a) of Section 46012 of the  
7 Revenue and Taxation Code. Interest earned until July 1, 1998,  
8 on funds deposited pursuant to subdivision (a) of Section 46012  
9 of the Revenue and Taxation Code, as determined jointly by the  
10 Controller and the Director of Finance, shall be available upon  
11 appropriation by the Legislature in the Budget Act to establish,  
12 equip, operate, and maintain the network of rescue and  
13 rehabilitation stations for oiled wildlife as described in Section  
14 8670.37.5 and to support technology development and research  
15 related to oiled wildlife care. Interest earned on the financial  
16 security portion of the fund, required to be accessible pursuant to  
17 subdivision (b) of Section 46012 of the Revenue and Taxation  
18 Code shall not be available for that purpose. If the amount in the  
19 fund exceeds that designated amount, the interest not needed to  
20 equip, operate, and maintain the network of rescue and  
21 rehabilitation stations, or for appropriate technology development  
22 and research regarding oiled wildlife care, shall be deposited into  
23 the Oil Spill Prevention and Administration Fund, and shall be  
24 available for the purposes authorized by Article 6 (commencing  
25 with Section 8670.38).

26 (2) (A) (i) For each fiscal year, consistent with this article, the  
27 administrator shall submit, as a proposed appropriation in the  
28 Governor's Budget, an amount up to two million dollars  
29 (\$2,000,000) of the Oil Spill Response Trust Fund for the purpose  
30 of equipping, operating, and maintaining the network of oiled  
31 wildlife rescue and rehabilitation stations and proactive oiled  
32 wildlife search and collection rescue efforts established pursuant  
33 to Section 8670.37.5 and for support of technology development  
34 and research related to oiled wildlife care.

35 (ii) The proposed appropriation submitted pursuant to this  
36 paragraph shall be made up of the interest earned on the funds  
37 deposited into the Oil Spill Response Trust Fund. If there is any  
38 remaining interest earned in excess of the amount appropriated,  
39 such funds shall be deposited into the Oil Spill Prevention and  
40 Administration Fund pursuant to paragraph (1).

1 (iii) If the proposed appropriation submitted pursuant to this  
2 subparagraph exceeds the interest earned on the funds deposited  
3 into the Oil Spill Response Trust Fund available for the fiscal year  
4 for which the appropriation is proposed, then an additional amount  
5 not to exceed the difference between the interest earned and two  
6 million dollars (\$2,000,000) may be included in the proposed  
7 appropriation from funds deposited into the Oil Spill Response  
8 Trust Fund specifically for this purpose to the extent that such  
9 funds are ~~appropriated~~ *transferred* in Section 8670.43.

10 (B) The administrator shall report to the Legislature not later  
11 than June 30, 2002, on the progress and effectiveness of the  
12 network of oiled wildlife rescue and rehabilitation stations  
13 established pursuant to Section 8670.37.5, and the adequacy of  
14 the Oil Spill Response Trust Fund to meet the purposes for which  
15 it was established.

16 (C) At the administrator's request, the funds made available  
17 pursuant to this paragraph may be directly appropriated to a suitable  
18 program for wildlife health and rehabilitation within a school of  
19 veterinary medicine within this state, provided that an agreement  
20 exists, consistent with this chapter, between the administrator and  
21 an appropriate representative of the program for carrying out that  
22 purpose. The administrator shall attempt to have an agreement in  
23 place at all times. The agreement shall ensure that the training of,  
24 and the care provided by, the program staff are at levels that are  
25 consistent with those standards generally accepted within the  
26 veterinary profession.

27 (D) The funds made available pursuant to this paragraph shall  
28 not be considered an offset to any other state funds appropriated  
29 to the program, the program's associated school of veterinary  
30 medicine, or the program's associated college or university, and  
31 the funds shall not be used for any other purpose. If an offset does  
32 occur or the funds are used for an unintended purpose, expenditure  
33 of any appropriation of funds pursuant to this paragraph may be  
34 terminated by the administrator and the administrator may request  
35 a reappropriation to accomplish the intended purpose. The  
36 administrator shall annually review and approve the proposed uses  
37 of any funds made available pursuant to this paragraph.

38 (m) The Legislature finds and declares that effective response  
39 to oil spills requires that the state have available sufficient funds  
40 in a response fund. The Legislature further finds and declares that

1 maintenance of that fund is of utmost importance to the state and  
2 that the money in the fund shall be used solely for the purposes  
3 specified in subdivision (k).

4 (n) It is the intent of the Legislature, in enacting this section,  
5 that the fee shall not be imposed by a refiner, or a person or entity  
6 acting as an agent for a refiner, on crude oil produced by an  
7 independent crude oil producer.

8 (o) The Treasurer shall obtain financial security, in the  
9 designated amount specified in subdivision (b) of Section 46012  
10 of the Revenue and Taxation Code, in a form which, in the event  
11 of an oil spill, may be drawn upon immediately by the administrator  
12 upon making the determinations required by paragraph (2) of  
13 subdivision (a) of Section 8670.49. The financial security may be  
14 obtained in any of the forms described in subdivision (b) of Section  
15 8670.53.3, as determined by the Treasurer.

16 (p) This section does not limit the authority of the administrator  
17 to raise oil spill response fees pursuant to Section 8670.48.5.